The Solicitors' Journal

Vol. 96 March 29, 1952 No. 13

CURRENT TOPICS

A Ministry of Justice

A REASONED plea for either the creation of a Ministry of Justice or the extension of the Lord Chancellor's department was made in a letter from Mr. W. HARVEY MOORE, Q.C., to *The Times* of 18th March. He wrote: "In order to provide effective law reform machinery it may be considered whether additional Ministerial assistance, such as exists in executive departments, should not be provided to the Lord Chancellor also. Such an office—a new form of the old Vice-Chancellor's—occupied by a distinguished lawyer in general sympathy with and, like the Lord Chancellor, a member of the Government of the day, might establish that further link between the executive and the judiciary which is necessary if legal progress is to be achieved. The Vice-Chancellor would preside over a permanent law reform committee, comparable to the Lord Chancellor's committees that gave us the Married Women's and Tortfeasors and other Acts, and he would be in a position to advise the committee as to what developments were likely to receive general Government support, and commend the findings of the committee to his political colleagues." Mr. GERALD GARDINER, Q.C., writing in *The Times* of 20th March, was in substantial agreement that it was desirable either to create a Ministry of Justice or to extend the Lord Chancellor's department, but thought that the name, the Ministry of Justice, which excited much controversy, was unimportant. To the majority of people, however, names are important, and anything which brings to mind interference by the executive with an independent judiciary should in our view be avoided. No doubt a rose smells as sweet by whatever name it is called, but that is not a good reason for calling it an onion. LORD SCHUSTER, writing in *The Times* of 24th March, 1952, considered that "if further strength is needed in the consideration of strictly legal problems, it might be suggested that it is required in the Law Officers' Department."

The Legal Aid Scheme in the Lords

How admirably the legal aid scheme has succeeded within its limited application, and at a cost to the community much below that estimated, was the theme of a speech by the LORD CHANCELLOR on 20th March in reply to a motion by LORD MANCROFT in the Lords. He gave these figures: Twelve area committees had been set up with 112 certifying committees under them. In the first year the 112 certifying committees held 2,500 meetings, and examined nearly 68,000 applications. In 40,000 cases they gave certificates. Only about 2,500 of the cases came up for judgment during that year, and 88 per cent. were successful, although a large proportion were matrimonial cases in which there was no defence. In the cases that went to the Queen's Bench Division, 70 per cent. were successful and others were settled. He said that LORD GODDARD's information about the large proportion of aided appeals being unsuccessful was not correct. In the first year, forty-nine cases went to the Court of Appeal, of

CONTENTS

which twenty-five were successful and twenty-four unsuccessful. He suggested that the certifying committees should insist upon having a transcript of the judgment in every case in which they thought an appeal ought to be granted. The cost in the current year, October to September, was expected to be about £212,000; it was estimated that in a full year the cost would be something like £1,500,000. He added that if more money was available from the Exchequer it should be devoted to the introduction of the legal advice part of the scheme. He begged the judges who had anything to criticise not only to do so in open court if they thought fit, but also to communicate the facts to The Law Society or his department. Some of the criticisms had been found upon investigation not to be well founded. There had been one or two cases where the criticisms had been conspicuously ill-founded. Lord Goddard had stated in the course of a short debate that a great debt was owed to The Law Society and the area committees, who had administered the scheme without remuneration.

The Birmingham Law Society

THE report of the committee of the Birmingham Law Society for the year ended 31st December, 1951, presented to the annual general meeting on 26th March, 1952, shows that the membership of the society has increased by twelve as compared with last year, the number on the register on the 31st December, 1951, being 487. Among interesting items of local news is the appointment of a member, Alderman R. C. YATES, to be Lord Mayor of Birmingham. This is the fourteenth occasion upon which a practising solicitor has been made Lord Mayor and he was presented with an illuminated address recording the society's congratulations. One member, Mr. C. F. CROWDER, had died aged 91, and another, Colonel MARTINEAU, had died aged 90. Two hundred and sixty-five members are also members of the Solicitors' Benevolent Association, an increase of six during the year. The sale of Conditions of Sale shows a continuing increase, 41,043 copies having been sold in the year, an increase of nearly 1,200 on the figure for 1950. The committee drew the attention of The Law Society to the decision in *Butler* v. *Mountview Estates, Ltd.*, and suggested that this gave rise to a point meriting consideration in the course of reviewing the form of the General Conditions. At the conclusion in September, 1951, of the first year of the operation of the Legal Aid and Advice Act, 1949, in the Birmingham area, 1,826 applications had been made to the local committee, in addition to some 1,000 applications for legal aid not available under the Act in its present restricted form. Of these 1,826 applications, 78 per cent. were concerned with matrimonial matters and 22 per cent. with non-matrimonial, largely consisting of common-law actions for negligence, probate, partnership and company matters and claims under the Inheritance (Family Provision) Act, 1938. Of these applications, 122 were subsequently withdrawn or abandoned before consideration, and eighty-seven, all received during the last month of the year, were outstanding. Certifying committees of the local committee held fifty-six meetings and considered 1,617 applications, granting 79 per cent., and refusing 16 per cent. on legal grounds and 5 per cent. on financial ones. On the average all applications received by the seventh day of the month were prepared and considered by the end of that month, that is, within an average of under twenty-four days. A report of the Dean of the Faculty of Law and Director of Legal Studies in the University of Birmingham for the Session 1st October, 1950, to 30th September, 1951, an extract from which is printed as an appendix, states that the number of students registered for the statutory year course in October, 1950, was forty, compared with twenty-six in the previous year. Of these, thirty-nine were entitled to their certificate of attendance.

Taxation

THREE ESTATE DUTY DECISIONS

DISCRETIONARY TRUSTS—RESERVATION OF BENEFITS

THE recent decision of the Judicial Committee of the Privy Council in *Commissioner of Stamp Duties of New South Wales* v. *Way and Others* [1952] 1 All E.R. 198, is upon the provisions of the estate duty legislation of New South Wales, which by no means follows the English law. Nevertheless, it is of interest to practitioners in this country upon two quite distinct points.

It will be remembered that when, in consequence of a death, certain funds which are held for a defined group of beneficiaries cease to be so held and become held for another, differently constituted group, there is a passing of the whole funds under s. 1 of the Finance Act, 1894, and this is no less the case because some members of the first group are also members of the second. Thus, if funds are held upon a discretionary trust for (say) six beneficiaries during the life of X, but on the death of X a seventh beneficiary is introduced, then there would be a passing of the whole fund under s. 1 (see *Burrell and Kinnaird* v. *A.-G.* [1937] A.C. 286). On the other hand, where the effect of the death is only to make indefeasible that which was previously defeasible, then there is no such passing although, of course, there may be a charge to duty under s. 2 (1) (*d*) upon the value of the "interests arising" (see *A.-G.* v. *Lloyds Bank, Ltd.* [1935] A.C. 382).

In the case before the Privy Council there was a settlement to apply income for certain charitable purposes, and it was provided that the mode of application and appropriation of the trust fund was to be in the discretion of the trustees, but during the lifetime of the settlor subject to his direction and approval. It was argued for the Commissioner that, as a result of this provision, on the death of the settlor a new trust took effect—a trust for the objects selected by the trustees unfettered by the settlor's power of direction.

Lord Radcliffe, giving the opinion of the Board, stated that the case might be distinguished from *Burrell's* case, *supra*, in that the settlement was a settlement, not for different groups of beneficiaries, but rather for specified charitable purposes so that those who received payments out of the fund were less beneficiaries than objects of or vehicles for the charitable purpose. Apart, however, from this distinction, the Board thought that it could not be said that new trusts arose upon the death of the settlor unless it were correct to regard a right or duty of exercising a discretion in the course of administration as though it were itself a trust. It was held, therefore, that there was no change in the trusts upon the settlor's death and hence, had the same principles been applied to an English case, there would have been no passing under s. 1.

The valuable point about this part of the decision is that, if there is a discretionary trust for a class of beneficiaries, a charge to duty will not arise only because the discretion is vested in the settlor during his life. What matters is the identity of the beneficiaries and not the identity of the persons exercising the discretion. It would, of course, be

entirely different if the discretion came to an end upon the death of the settlor so that the objects then took in ascertained shares.

The second part of the decision is valuable from an English lawyer's point of view as a further illustration of what may or may not constitute a reservation of a benefit or interest which will stop the running of the well known "five-year period." It will be recalled that by s. 11 (1) of the Customs and Inland Revenue Act, 1889, the property must be retained "to the entire exclusion of the deceased or of any benefit to him by contract or otherwise."

It was provided in the settlement that ". . . the trustees may during the lifetime of the settlor or afterwards and shall during the lifetime of the settlor if he so directs apply and appropriate any property including moneys belonging to the trust for the purposes of acquiring by purchase or exchange from the settlor or his executors any . . . property . . . valued for the purposes of such sale or exchange at a sum at least 5 per cent. below the valuation of such . . . property as ascertained by some independent valuer. . . ." This provision was embedded in that part of the settlement dealing with powers of investment and, of course, had it not been for the power of direction given to the settlor it would have been quite harmless. The settlor was also a trustee and the clause would have been little more than a power to purchase from or sell to the settlor notwithstanding his trusteeship.

It was held that this clause did not amount to a reservation of a benefit for two reasons. Firstly, the Board thought that what the provision amounted to was that the settlor had power to direct how the trustees should invest or apply the trust funds, and it was held that there was a presumption that the settlor's power was a fiduciary one to be exercised for the benefit of the settlement and not of himself. Indeed, it was pointed out that, if the trustees acquired property from the settlor, whether or not by his direction, it must be upon terms pecuniarily disadvantageous to him. Secondly, it was held that, quite apart from its fiduciary nature, the power did not go far enough to touch the trust property. Even if the settlor did direct that the trustees should purchase certain assets he could not say what existing items of trust property should be realised or applied for that purpose.

The second part of the decision, therefore, seems to be an indication that it may be that a settlor can reserve some sort of power over the trust assets so long as that power is such that it must be exercised fiduciarily. But, nevertheless, that conclusion must be drawn with caution since in the case before the Board it was clear that the settlor could not reap any direct pecuniary benefit: it might be that where the exercise of a power, albeit a fiduciary one, could result in direct pecuniary benefit to the settlor the courts would be less willing to say that no benefit had been reserved.

The Cesser of an Annuity

The recent case of *Re Lambton's Marriage Settlement* [1952] 1 T.L.R. 127, is interesting both for its own sake and because it is an example of the reversal of a long-settled practice of the Estate Duty Office having been upheld upon a ground which does not appear to have been in the forefront of the Crown's argument at the beginning of the hearing.

The facts were simple. Funds were settled by a marriage settlement during the joint lives of husband and wife to pay an annuity of £400 per annum to the wife and subject thereto to pay the income to the husband. Upon the death of either party the income was payable to the survivor for life with remainder to the children of the marriage. The husband died leaving the wife surviving him, so that she took a life interest in the whole fund. It will be observed that before the death of the husband the wife was receiving £400 of the income by way of annuity, so that on his death her actual income was increased only by the difference between the annuity and the total income of the fund.

On the death of the husband, the Crown claimed estate duty upon the whole fund without deduction for the annuity, whilst the trustees maintained that there should be deducted, on the "slice" principle, an allowance for the £400 per annum which the wife would continue to receive, although now as part of the general income and not as an annuity.

The court was not without authority on the matter. It was not disputed that for many years it had been thought that *A.-G.* v. *Glossop* [1907] 1 K.B. 163 was authority for the trustees' contention, but the Crown now contended that that decision (which was of the Court of Appeal) was inconsistent with *Earl Cowley* v. *I.R.C.* [1899] A.C. 198, and with *De Trafford* v. *A.-G.* [1935] A.C. 280, both decisions of the House of Lords, and hence ought not to be followed. In the event, however, the learned judge was able to find that, whilst *A.-G.* v. *Glossop*, *supra*, was rightly decided upon the law as it then stood, yet subsequent amendment rendered it no longer applicable to the facts before him.

In *A.-G.* v. *Glossop* the facts were indistinguishable from those in *Re Lambton's Marriage Settlement*, and it was held (*per* Farwell, L.J., at p. 180):—

> "The question turns upon s. 5 (3) of the Finance Act, 1894, which provides that 'in the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass upon his death.' In this case . . . it seems clear to me that the husband failed to take any interest in possession in such part of the wife's fortune as is properly attributable to the production of the £400 annuity."

Pausing there, it may with great respect be suggested that it is difficult to see how there was any segregated "slice" which had not come into possession, since the annuity was in fact charged over the whole of the settled funds, and in any case the "slice" concept is really only concerned with the charging provisions of the Finance Act, 1894, and not with any claim to relief. But be that as it may, s. 48 of the Finance Act, 1938, amended s. 5 (3) of the Finance Act, 1894, by the addition thereto of the words, "by reason only of the failure or determination of that interest." The effect of this amendment is that estate duty will be payable if it is possible to show that there is a charge under s. 1 or s. 2 of the Finance Act, 1894, independently of the failure of the deceased's future interest.

Now, in the case under discussion, the whole of the funds in fact came within s. 1 of the 1894 Act, since, to adapt the words of Lord Russell of Killowen ([1935] A.C., at p. 288), the wife's right to receive an annual sum of £400 ceased upon the death of her husband, and her right, which then arose, to receive the whole income was a new and different right.

The immediate lesson, therefore, of *Re Lambton's Marriage Settlement* is that, where an annuitant becomes entitled upon the death of another to receive the whole income of the funds upon which his annuity was charged, estate duty will be payable upon the whole of the funds yielding that income. It also holds a lesson for conveyancers in that it may draw their attention to the fact that, between estate duty upon the one hand and the possibility of a r. 21 claim to income

tax upon the other, it may well be that an annuity charged upon the income and capital of a fund is an expensive luxury and a better proposition for the Crown than for the beneficiaries; the more so since it is possible to provide more or less similar benefits by alternative methods.

Shifting the Incidence of Estate Duty

It is common to find in a will a provision to the effect that certain benefits given by the will are to be enjoyed free of all estate duty, and where interests in succession are given by that will the question will often arise whether, upon a true construction of the testator's words, the exoneration extends, to use the wording employed in *Re Wedgewood* [1932] 1 Ch. 601, only to duties arising in consequence of the testator's death, or whether it extends also to duties arising in consequence of the dispositions made by his will. That is to say, if a sum is settled upon A for life, remainder to B for life, remainder to C absolutely, is it the duty of the executors to retain sufficient funds in residue to meet the estate duty chargeable upon the deaths of A and B?

Whether that is the testator's intention is in every case a matter of construction. It is a matter which has recently been before both Harman, J., in *Re Shepherd* [1949] Ch. 116, and Vaisey, J., in *Re Howell* [1952] 1 T.L.R. 371. The authorities are examined in those two cases, and it is thought that a short quotation from Vaisey, J.'s judgment is sufficient to indicate the present position. He said (at p. 375):—

> "Mr. Justice Harman held [in *Re Shepherd*]: 'There is a presumption that a testator only intends to provide for the payment of duties arising on his own death' . . . I am not quite sure that I should have put it as strongly as Mr. Justice Harman did as to the existence of a presumption, but I think that it would be accurate to say that there is a strong tendency against coming to . . . a [contrary] conclusion . . . It is very awkward to . . . hold up the distribution of the residue for a number of years. . . . if testators desire to provide that their estates shall be held up to meet . . . future [duty] claims, they ought to say so in unmistakable terms."

G. B. G.

A Conveyancer's Diary

CONDITIONAL BEQUESTS

On the whole, English law has never liked conditional gifts, and a case in which such a gift has been upheld in its entirety and not either shorn of its conditions or declared completely void is a rarity. An instance of this tendency is *Re Elliott* [1952] 1 T.L.R. 298; 96 Sol. J. 73, in which a testator gave the sum of £100 to a hospital to be invested for the purpose of maintaining a grave in a cemetery, and subject to the hospital accepting this sum and the terms attaching thereto the testator gave his residuary estate to the hospital. Harman, J., first construed the gift, and having regard to its terms concluded that it had been the testator's intention that the sum of £100 should be set apart in perpetuity for the purpose of maintaining the grave and that it had not been intended that the *corpus* of the fund should be expended. The direction to invest pointed to this conclusion. On this footing the gift of the sum of £100 was void as creating a perpetuity, and the question then arose whether the illegality of the condition attaching to the gift of residue avoided that gift, or whether the condition could be completely disregarded.

The law on this subject is stated in two short passages in Roper on Legacies, 4th ed., to which the learned judge referred, as follows:—

> "It is a general rule of the common law, applicable to real estate, that where an interest is so devised as only to arise upon a preceding condition, it cannot vest until that condition be performed, or the event happens, upon which it is given. This rule has been acknowledged and acted upon ever since the time of Lord Coke. The principle is, that there is no devise until the happening of the event, or performance of the terms upon which the disposition is made; a principle which applies to every case, so that although the condition required the performance of an impossible act, as for the devisee to go to Paris in half an hour, or it require the devisee to do an illegal act, as to kill B or to burn his house (conditions *mala in se*); or whether it require a woman to separate from her husband (a condition against the policy of law); or whether the devise be made on condition that the legatee have criminal connexion with a particular person (a condition *contra bonos mores*); the before stated principle authorises the conclusion, that, as all such conditions are void, the dispositions to arise only upon their performance are also void. But the rule of the civil law is different" (p. 754).

The rule of the civil law is stated in a subsequent passage (4th ed., p. 757):—

> "It is a rule of the civil law, that, if a precedent condition require the performance of an act *malum in se*, as to kill B, burn his house, etc.; not only the condition, but the disposition itself is void; a rule, which being in unison with the common law in devises of real estate, it is presumed that similar dispositions of personal property will receive the like construction in courts of equity. When, however, the illegality of the condition does not concern anything *malum in se*, but is merely against a rule or the policy of law, the condition only is void, and the bequest single and good; for the condition not being lawful, it is held in the phrase of the civil law *pro non adjecta*" [i.e., as if the condition had never been annexed].

Applying these principles, Harman, J., held in the present case that as the illegality of the condition did not concern anything *malum in se*, but was merely *malum prohibitum*, the condition could be disregarded without the gift of residue which was expressed as dependent thereon being itself avoided. The hospital could, therefore, take the gift of residue and disregard the condition.

It will have been observed that the passages from Roper on Legacies above quoted refer only to conditions precedent, which are the only conditions subject to the distinctions which the English law has in part taken over from the civil law. Conditions subsequent are much more simple in this respect. If a condition subsequent, i.e., a defeasance provision, is annexed to a gift, whether the gift is of realty or of personalty, and the condition is one which is either illegal, or against the policy of the law, or impossible of performance, the condition is avoided, and the gift takes effect freed therefrom; and this is so even though there may be a gift over in the event of the condition not being performed or fulfilled.

The nature of the condition in *Re Elliott* made it unnecessary to consider in any detail the categories into which a condition precedent annexed to a gift of personalty may fall, but the examples given in Roper are not exhaustive. In a passage

in Jarman on Wills (8th ed., pp. 1457–8) conditions are divided into two classes for this purpose, according as they are to be disregarded in the same way as similar conditions subsequent or treated as invalidating the gifts to which they are annexed. Among the former are instanced conditions which are originally impossible, or illegal as involving *malum prohibitum*, and this corresponds with the passage from Roper first quoted above. But when it comes to the other class of conditions, Jarman's enumeration is much fuller, and four separate instances of this kind of condition are given: (i) where the performance of the condition is the sole motive of the bequest; (ii) where the impossibility of the condition was unknown to the testator; (iii) where the condition being originally capable of performance has become impossible by act of God; and (iv) where the performance of the condition necessarily involves something which is *malum in se*; in all such cases the invalidity of the condition affects the gift itself, and both are treated as void.

Some of the distinctions which have been drawn in this branch of the law are very fine, and there is often room for dispute whether a given condition falls within one category or another. In the case of conditions of the kind mentioned at (i), difficult questions of construction may easily arise, and except in very simple cases (of which *Re Elliott* may perhaps be regarded as an example) the application of the considerable case law on conditions precedent annexed to gifts of personalty is far from easy and may well end in litigation.

Yet it is very difficult to persuade a testator who is bent, shall we say, on arranging for the preservation of a tomb or memorial in perpetuity that his project cannot be carried out, and a blunt refusal to have anything to do with a disposition of property framed to this end may well have the result that the client dispenses wholly with professional assistance and makes his own will in his own way. I suspect that something like that happened in *Re Tyler* [1891] 3 Ch. 252, and similar cases, and it is not desirable that this sort of history should repeat itself too often. If, therefore, a potential testator insists on making a gift conditional (in the ordinary sense of that word) on something being done, the performance of which is illegal though involving nothing not amounting to *malum in se*, consideration should be given to the question whether what cannot be carried out by means of a conditional gift may not turn out to be possible, as the law now stands, if framed as a determinable limitation. Having regard to the decision in *Re Chambers' Will Trusts* [1950] Ch. 267, a gift of £*x* upon trust to pay the income thereof to the Y institution during such time as the institution in question shall perform some duty not involving *malum in se* (e.g., maintaining a grave not in a church) is not void as infringing the rule against perpetuities. A gift over to another donee on the failure of the Y institution to perform the duty in question is void, but this is not a circumstance which materially affects a disposition of this kind, since, whether such a gift over is expressed or not, the fund, on the failure of the primary donee to perform the condition, falls into residue and becomes distributable as such, and the continuing existence of this possibility should usually be sufficient to ensure the performance by the donee of the duty imposed by the testator.

I say that this form of limitation is permissible "as the law now stands" because the decision in *Re Chambers' Will Trusts* followed that in one of the most controversial cases in recent times—*Re Chardon* [1928] Ch. 464; and it is at the very least possible that the Court of Appeal would reverse the latter decision if it had the opportunity. But as it would be open to the House of Lords to refuse to continue the recognition which has been accorded by the English law to the importation from the civil law of the distinctions which the civil law allows as between the different categories into which it has divided conditions precedent, and to declare that in our law all conditions precedent annexed to gifts of personalty shall be treated in the same way as similar conditions annexed to gifts of realty, or conditions subsequent annexed to gifts of any kind of property, there is perhaps little more danger in making use of the decision in *Re Chambers' Will Trusts* than in following some of the old cases on conditional gifts. But however that may be, *Re Elliott* serves as a useful reminder that dispositions of this kind, whether framed as conditional gifts or as determinable limitations, are subject to highly technical rules, and that a slip in this kind of disposition is likely to prove fatal to the donor's aim.

"A B C"

Landlord and Tenant Notebook

LEASEHOLD PROPERTY (TEMPORARY PROVISIONS) ACT, 1951: SHOPS AND TENANTS

SINCE I discussed an unreported decision under Pt. II of the Leasehold Property (Temporary Provisions) Act, 1951, two reported cases have illustrated the scope of that enactment. The question dealt with in the one was: "What is a shop?"; in the other: "Who is a tenant?"

In *Berthelemy* v. *Neale* [1952] 1 T.L.R. 458; 96 SOL. J. 165 (C.A.), the court dismissed an appeal from Clerkenwell County Court, where it had been held that the applicant for a "new tenancy" was not the occupier of a shop under a tenancy to which s. 10 of the Act referred because the premises which he held were not a "shop" as defined by s. 20 (1). The definition can give rise to difficulties; it says that the expression means "premises occupied wholly for business purposes, and so occupied wholly or mainly for the purposes of a retail trade or business," and a glance at the definition of "retail trade or business" in the same subsection shows that occasions may arise when it is necessary to refer to the Shops Act, 1950, to the Finance (1909-10) Act, 1910, s. 45, and to regulations made thereunder, and to inquire whether or not the Commissioners of Customs and Excise have issued a certificate. No such problems confronted the courts in the recent case, however; the question at issue could be described as being whether what mattered was how much of the premises was occupied for retail business, or how much of the business carried on was retail business.

The activities which the applicant carried on on the premises let to him included the re-silvering and smoothing and scaling of thermometer scales, and the cutting of mirrors for ladies' handbags; and nearly all the products of those activities were sold to "trade customers." But he did sell handbag mirrors by retail, the turnover of the retail business being but a small proportion of the total turnover. And his case was that that retail business was conducted anywhere and everywhere on the demised premises, so that, while those

premises were not occupied mainly for the purposes of a retail trade or business, they were occupied wholly for the purposes of a retail trade or business.

Neither court could see its way to accepting this contention. The Court of Appeal, in rejecting it, pointed out that the second part of the definition, " and so occupied wholly or mainly for the purposes of a retail trade or business," qualifies the " premises occupied wholly for business purposes " of the first part, which contains no " or mainly " alternative; the qualification introduces the factor of purpose, and the " wholly or mainly " of the second part refers to purpose and not to cubic space.

It was also urged that the county court judge had erred by comparing the respective yields of wholesale and retail activities and deciding the matter of " wholly or mainly " by reference to the result. Counsel instanced a case of a tobacconist making far more money as a commission agent, using his telephone for the second-mentioned purpose, and complained that the method adopted by the judge of first instance in his case would mean that the tenant could not qualify for a new tenancy. The reaction of the Court of Appeal to this was that " the answer in any given case is to be supplied by the tribunal of fact on common-sense lines. No doubt the relative income gained by the different activities is an important (and possibly, in some cases, the most important) element for consideration. But . . . not . . . necessarily exhaustive."

In the other case, *Pegler* v. *Craven* [1952] 1 T.L.R. 618; p. 196, *post*, the Court of Appeal allowed an appeal by a landlord in the following circumstances: The premises were combined premises, and the tenant an individual who lived in the upper residential part, but who had, together with some friends, formed a limited company which carried on the business of the shop below. The opening section of Pt. II of the Act, s. 10, begins: " (1) The provisions of this Part of this Act shall have effect for enabling the occupier of a shop under a tenancy to which this section applies to apply to the court for . . . the grant of a new tenancy . . ." and by subs. (2) the section " applies to a tenancy the subject of which (*a*) consists of a shop, or (*b*) consists of a shop and of living accommodation occupied wholly or mainly by the tenant or by a person who is employed by the tenant for the purposes of the retail trade or business carried on in the shop. . . ."

The county court judge considered that the applicant was " the occupier of a shop under a tenancy," but the Court of Appeal disagreed, making special reference to subs. (2) (*b*) to support its conclusion.

The argument advanced for the tenant was that one could occupy by a licensee, and very likely some reliance was placed on the Rent Act decision in *Brown* v. *Draper* [1944] K.B. 309 (C.A.). In that case the wife of a statutory tenant was held to be entitled to protection despite her husband's efforts to renounce it (and her): like the company in *Pegler* v. *Craven*, she had no tenancy, and no contract with, the landlord. But it was the peculiar structure of the Increase of Rent, etc., Restrictions Acts which prevented her from being a trespasser; and later, in *Old Gate Estates, Ltd.* v. *Alexander* [1950] 1 K.B. 311 (C.A.), it was pointed out that in such circumstances the law of husband and wife might take a hand. In *Pegler* v. *Craven*, tenant and company may have got on very well together, but the difficulty must have been to show that it was the tenant who was the occupier of the shop.

Another decision which might go some way, but not far enough, to support the tenant's case in such circumstances would be *Chaplin* v. *Smith* [1926] 1 K.B. 198 (C.A.), an action for forfeiture for breach of covenant " not to assign or underlet or part with the possession or otherwise dispose of the premises or any part thereof " without consent. The premises were let and used as a garage, and when the defendant " turned himself into a company " (he was managing director with 1,501 of the 1,754 ordinary shares) he was refused a licence to sub-let to that company. Nevertheless, the company carried on the business, and later another company, of which the defendant was also managing director, took over the business and assets and liabilities, but it was agreed that the defendant should remain in possession as tenant, and he in fact retained the key. It was held that he had not parted with possession. Possibly, with that wisdom which comes so easily after the event, the applicant in the recent case is regretting that he did not do something of this sort.

In conclusion, I might mention that the statute has produced another decision, *Tymans, Ltd.* v. *Craven* [1952] 1 T.L.R. 601; p. 196, *post*, which, however, will interest those concerned with company law or with metaphysics rather than those concerned with leases. The applicant company had been struck off under the Companies Act, 1948, s. 353, when it entered, or purported to enter, its application pursuant to s. 12 of the Leasehold Property (Temporary Provisions) Act, 1951, but shortly before the hearing it had been " restored " under subs. (6) of the former. The county court judge considered that he had no jurisdiction, but the Court of Appeal, by a majority, held that he had, the restoration being more than an authority to resume activities. For a landlord-and-tenant parallel, one might turn to *Dendy* v. *Evans* [1910] 1 K.B. 263 (C.A.), showing how relief against forfeiture puts the applicant in the same position as if there never had been any forfeiture.

R. B.

HERE AND THERE

ANIMAL KINGDOM

SOME time last year I remember being intrigued by a learned judge's observations to the effect that someone or other, a party to a case, had written a letter such as one would not write to a dog. This powerful figure of speech aroused speculations among the thoughtful as to (*a*) why the customary graces and amenities of letter writing should be relaxed in the case of canine recipients and (*b*)—assuming the letter written—how the contents were to be communicated to the addressee. Since for dogs the chief vehicle of knowledge appears to be their noses, no doubt some devoted dog-lover could compose a code of smells transferable to paper—a sort of canine braille—for their instruction and amusement, so that should any underbred person actually send a dog such a letter as the learned judge adumbrated the irritated recipient might exclaim, " I say, that man's written me an absolute stinker," and might reply in kind. Now just lately Hilbery, J., has led us back to the animal kingdom in a burst of imagery not lacking in evocative power. " You are," he told a man at Winchester Assizes, " no better than a gorilla or orang-outang, who in later life has not become fit to live with even gorillas or orang-outangs. Your record shows you are really not fit to be called human. You are only in truth fit to be behind bars for the rest of your life." The picture suggested of the powerful circle of senior members of the Monkey Club at the Zoo blackballing the undesirable outsider—the maladjusted misfit who was neither truly human nor truly anthropoid—thrust uninvited into their society, is irresistible.

OVER THE WALL

AT these same Winchester Assizes the outside world was accorded a remarkable peep over the walls of Parkhurst and into the lives of British prisons and their inmates. The ordinary citizen, full of the innocence and inexperience of the unconvicted, is in a state of some bewilderment on the subject. One set of voices denounces the softness and extravagant luxury (as they describe it) of the modern prison; surely, they say, common sense and the need for national economy suggest that it would be no bad thing if they were made at least as spartan as, say, the average public school of sixty or seventy years ago. Another set of voices, not always perfectly intelligible when they speak the hieratic language of psychotherapy, would deal with all that we now call crime as a sort of mental disorder amenable to sympathetic treatment, with regeneration completely ousting retribution as a conception of scientific penology. And now we get the very voices of the men inside. Take these two little passages of assize court dialogue: (1) "Q. Did you shoot?—A. Yes. Q. On both occasions?—A. Yes. Q. At police officers?—A. Yes. Q. You don't hesitate to shoot, do you?—A. No, I don't. Why should I if I'm going to prison for a long time? I might as well shoot and get topped. Q. By 'topped' you mean hanged?—A. Yes." (2) "Q. And you hit a prison officer?—A. Yes, with a table-leg in self-defence. I don't hit people with table-legs for nothing. Q. Did you kill a man in self-defence?—A. Yes. Q. And you burgled in self-defence? [No reply]." With all the modern gaol's hygiene and routine eighteenth-century Newgate is really not so very far below the surface, especially with the steady rise in crimes of violence and the prison population, at nearly 22,000, higher than at any time since 1909. The background of the case at Winchester, an informer or "grass" slashed in the throat with a prison-made knife and marked for life with a six-inch scar, is pure Newgate Calendar. So is the strong-arm tyranny of the "snout barons" controlling and operating a black market in tobacco as a prison currency for betting and barter. In the same spirit (only with the additional blessings of applied science) are the prison-made incendiary bombs manufactured by substituting for the filament of an electric bulb a pad soaked in a highly inflammable paint-drying preparation which bursts into flames when the current is switched on.

BOOKING FOR BORSTAL

THAT picture of prison life isn't very inviting, is it? But then those are the intransigents in Parkhurst—it's an extreme. There is the other side of the picture, in its own way equally alarming, or encouraging, according to the way you look at it. Here is a recently published letter addressed to the Governor of a Borstal institution by the mother of one of his "old boys": "Dear Sir, My boy has greatly improved since you began to look after him. He is doing very well, brings home his wages regularly and doesn't mix with bad company any more. Please accept my grateful thanks. PS.—I'll see my other boy goes to Borstal too." One doesn't like to be pessimistic, but that does illustrate the sort of thing that Sir Charles Galton Darwin must have had in mind when he wrote in his new book "The Next Million Years": "At present the most efficient way for a man to survive in Britain is to be almost half-witted, completely irresponsible and spending a lot of his time in prison, where his health is far better looked after than outside." Far be it from me to throw cold water on reformations such as those described in the mother's testimonial. And, after all, the jolly party for the prodigal son has the very highest authority. One can, however, appreciate the point of the parable and still find it a trifle bizarre that any community can so arrange its affairs that the growing boy's best line-up for the race of life should be in the shades (or should one now say the lustre?) of the prison house. But perhaps that is only for those who are imperfectly attuned to the ideals of the egalitarian State. After all, it is only in prison (is it not?) that you can establish that complete equality of treatment in which fair shares are not just a theoretical desideratum but a *fait accompli* and the assertive idiosyncrasies of any unstandardised unit of personnel are kept properly under control.

RICHARD ROE.

NOTES OF CASES

HOUSE OF LORDS

TOWN AND COUNTRY PLANNING: ORDER BY CENTRAL LAND BOARD FOR COMPULSORY SALE OF LAND AT EXISTING USE VALUE: VALIDITY

Earl Fitzwilliam's Wentworth Estates Co., Ltd. *v.* Minister of Town and Country Planning

Lord Porter, Lord Goddard, Lord Oaksey, Lord MacDermott and Lord Tucker. 25th February, 1952

Appeal from the Court of Appeal ([1951] 2 K.B. 284; 95 SOL. J. 254).

The appellant landlords were owners of large estates in Sheffield. In 1948 they were approached by one R, who wished to lease a plot of land on which to build a house, and offered him a lease for 300 years at £20 10s., the tenant to pay the development charge and to be entitled to the sum due in respect of loss of development value. R obtained permission under the Town and Country Planning Act, 1947, to build a house on the plot, and on his application the Central Land Board made an order for the compulsory acquisition of the plot at the existing use value. The Minister confirmed the order after an inquiry. The landlords then applied under the Acquisition of Land (Authorisation Procedure) Act, 1946, for the order and confirmation to be quashed on the ground that it was invalid, as having been made with a view to enforcing the Board's policy of promoting sales at existing use value, and not in pursuance of the statutory purposes specified by s. 43 of the Act of 1947. That section provides: "(1) The Central Land Board may . . . acquire land for any purpose connected with the performance of their functions under the following provisions of this Act, and in particular may so acquire any land for the purpose of disposing of it for development for which permission has been granted under Part III of this Act on terms inclusive of any development charge payable . . . (2) If the Minister is satisfied that it is expedient in the public interest that the Board should acquire any land for any such purpose as aforesaid, and the Board are unable to acquire the land by agreement on reasonable terms, he may authorise the Board to acquire the land compulsorily in accordance with the provisions of this section." Birkett, J., and the Court of Appeal (Denning, L.J., dissenting) upheld the validity of the order, holding that the Board had acted within their powers under s. 43 (1) for the purpose of promoting the collection of development charges. The landlords appealed.

LORD PORTER said that there was no evidence that the Board had made the order for the collateral purpose imputed to them. Further, the Court of Appeal had rightly held that the second half of subs. (1) was interpretative of the powers conferred by the first half. So read, the subsection empowered the Board to acquire land for the purpose of fulfilling their functions as collectors of development charges. They had acted within their powers, and the appeal should be dismissed.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *J. E. S. Simon*, Q.C., and *J. Harcourt Barrington* (*Warren, Murton & Co.*, for *Newman & Bond*, Barnsley); *Sir Hartley Shawcross*, Q.C., *J. P. Ashworth* and *R. J. Parker* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF APPEAL

SALE OF GOODS: PAYMENT BY CONFIRMED CREDIT: DATE FOR OPENING OF CREDIT

Pavia & Co. S.P.A. *v.* Thurmann-Nielsen

Somervell and Denning, L.JJ., and Roxburgh, J. 18th February, 1952

Appeal from McNair, J. ([1951] 2 T.L.R. 802).

On 20th January, 1949, the sellers, a Brazilian company, contracted in writing with the buyers, an Italian company, for the

sale of a quantity of groundnuts, to be shipped from Brazil as to one half in February, March and/or April, and as to the other half in March, April and/or May, 1949, at sellers' option. The sellers guaranteed the Brazilian export licence and the buyers the Italian import licence. Payment was to be made by the buyers opening in favour of the sellers a confirmed and irrevocable credit, to be utilised against delivery of bills of lading and other documents. On 9th February the sellers obtained the export licence, notified the buyers by cable and asked them to open the credit. The buyers obtained the import licence on 4th March, but failed to open the credit until 22nd April. The sellers' bankers would not permit shipment to be made until the credit was opened. After 22nd April the sellers shipped a small quantity only. After arbitration proceedings, a special case was stated for the opinion of the court, the question being when the credit should have been made available to the sellers. McNair, J., held that the device of confirmed credit was intended primarily for the benefit of the sellers, and that the applicable date was such time after 9th February as the credit would have been opened, if the buyers had used reasonable diligence. The buyers appealed.

SOMERVELL, L.J., said that the buyers had contended that normally delivery and payment were concurrent conditions, and that a credit was not needed until the seller was ready to deliver; but it was unworkable to suggest that a buyer was under no duty to open a credit until a date which he could not know, i.e., when the goods reached the port. The proper view was that when a seller was given the right to ship over a period, the machinery for payment must be available over the whole of that period. The decision below was right, and the appeal should be dismissed.

DENNING, L.J., said that when a contract provided for payment by confirmed credit, the credit should be made available, in the absence of express stipulation, at the beginning of the shipment period. The seller was entitled to be sure of payment before he shipped the goods, and was not bound to state the precise date when he was going to ship. He might ship on the first day of the shipment period. If the buyer was to fulfil his obligations he must make the credit available on that date. The appeal should be dismissed.

ROXBURGH, J., agreed. Appeal dismissed.

APPEARANCES: *J. P. Widgery* (*Hicks, Arnold & Co.*); A. A. *Mocatta*, Q.C., and *Michael Holman* (*Richards, Butler & Co.*)

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

TOWN AND COUNTRY PLANNING: FORM OF ENFORCEMENT NOTICE

Burgess *v.* Jarvis

Somervell and Denning, L.JJ., and Roxburgh, J.
19th February, 1952

Appeal from Parker, J.

The defendant landlord erected sixteen houses in 1936 in contravention of the then existing town planning scheme. In May, 1951, the local authority served on the landlord and his tenants, one of whom was the plaintiff, an enforcement notice under s. 23 of the Town and Country Planning Act, 1947, requiring them to "demolish the aforesaid sixteen houses . . . within five years of the service of this notice." The notice did not specify a period at the end of which it was to become effective. The landlord served notices on the tenants to determine their tenancies, and informed them that he intended to demolish the houses. The plaintiff issued a writ against the landlord to restrain the proposed demolition, and an interim injunction was made by Parker, J., restraining the demolition until and unless an order was made under the Public Health Act, 1936. On appeal, the local authority were added as defendants, as it was desired to contend as a preliminary point that the notice was bad in law, in that it did not contain a statement of the period at the end of which it was to take effect. By s. 23 (2) of the Act of 1947 an enforcement notice "may require such steps as may be specified in the notice to be taken within such period as may be so specified . . ."; by subs. (3), ". . . an enforcement notice shall take effect at the expiration of such period (not being less than twenty-eight days after the service thereof) as may be specified therein," with a proviso that, "if within the period aforesaid" the owner makes an application to the local authority or lodges an appeal under subs. (4), the effect of the notice is suspended.

SOMERVELL, L.J., said that the Act plainly contemplated that there should be two periods specified: the first, under subs. (3), at the end of which the notice is to take effect; the second, under subs. (2), prescribing the time within which the specified steps are to be taken. It seemed to be the plain meaning of the words that the second period did not start until the first had expired. The first period was that within which the notice could be challenged as indicated; if the challenge was successful, the notice might never become effective at all. The notice in suit specified one period only, and so did not comply with the terms of the Act. If the contentions of the local authority were right, an appeal under this particular notice could be lodged at any time within the next five years.

DENNING, L.J., agreeing, said that the present notice must take effect at some time before the end of the five years, because the owner was required to act within that time; the only possible date on which it could take effect was the date of service, and that did not allow the twenty-eight days specified by subs. (3). The notice was, therefore, invalid.

ROXBURGH, J., agreed. Appeal allowed. Order varied.

APPEARANCES: *P. M. O'Connor* (*Hewitt, Woollacott & Chown*) *B. J. M. MacKenna*, Q.C., and *King Anningson* (*Light & Fulton*, for *W. H. House & Son*, Sevenoaks); *G. A. Thesiger*, Q.C., and *H. J. Baxter* (*Knocker & Foskett*, Sevenoaks).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

CHARGE GIVEN TO BANK: WHETHER MERGER OF CONTRACTUAL DEBT

Barclays Bank, Ltd. *v.* Beck

Somervell and Denning, L.JJ., and Roxburgh, J.
19th February, 1952

Appeal from Barry, J.

In 1949 the defendants, who were farmers, were considerably in debt to the plaintiffs, their bankers, and were jointly and severally liable for the overdraft; they executed in favour of the plaintiffs a fixed and floating charge under the provisions of the Agricultural Credits Act, 1928, which enables farmers to charge their agricultural assets in favour of a bank as security for advances. In 1950, after the plaintiffs had put in a receiver, the defendants' solicitors notified the plaintiffs' solicitors that an intending purchaser wished to purchase the defendants' farm for £28,000, and that the defendants had authorised him to pay £4,000 of the purchase money to the plaintiffs against their discharge of the charge. The defendants' overdraft was then slightly in excess of £4,000. After the receipt of the £4,000, and the release of the charge by the plaintiffs, the defendants refused to pay to the plaintiffs a further £582 due in respect of the receiver's charges and other expenses, contending that their ordinary contractual debts as customers of the plaintiffs had merged in the specialty charge, and had accordingly been discharged. The charge provided that ". . . the farmer will . . . pay to the bank the balance of all moneys now or hereafter owing . . . under any account current or any other account with the bank, and all other moneys and liabilities now or hereafter due or to become due from the farmer to the bank upon any account . . . whatever." Barry, J., gave judgment for the plaintiffs. The defendants appealed.

SOMERVELL, L.J., said that the effect of the clause, so far from merging the ordinary contractual relationship of banker and customer in the specialty debt, had the opposite effect. The debt now sued for did not arise under the charge, and there was nothing in the charge which could deprive the bank of their ordinary contractual rights. There was no merger, and the defence failed.

DENNING, L.J., said that in ordinary cases where a debtor gave a charge to secure a simple contract debt, that debt was merged in the specialty unless there was provision to the contrary. But the position regarding a current account with a bank was different; if, in such a case, the doctrine of merger applied at all, it would apply only to the debt existing at the date of the charge, and subsequent liabilities were not affected. In his opinion, the charge was merely collateral, and when it was discharged any balance was due on simple contract.

ROXBURGH, J., agreed. Appeal dismissed.

APPEARANCES: *J. G. S. Hobson* (*Glover & Co.*); *Percy Lamb*, Q.C., and *J. Bradburn* (*Sharpe, Pritchard & Co.*, for *Longmores*, Hertford).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: RENT RESTRICTION: INTENTION OF TENANT TO RETURN

Dixon and Another *v.* Tommis

Evershed, M.R., Jenkins and Hodson, L.JJ.
20th February, 1952

Appeal from Birmingham County Court.

The tenant of a dwelling-house began to build a house for himself in 1937; although it was not completed, he moved into it in 1951 with his family. He left behind some furniture in the rented house, which was occupied by his son and family. On the landlords bringing an action for possession, the tenant stated that he would retire from work in three years' time, and that he would then have to sell the new house and return to the rented house. The judge held that the tenant had *animus revertendi*, and dismissed the claim for possession. The landlords appealed.

JENKINS, L.J., said that it had been contended that as a matter of law the intended return was so much in the future that the court should ignore it. But it was a matter of degree, and it could not be said that the judge had erred in law in holding that there was sufficient *animus revertendi* to support the tenant's case. The language used by Asquith, L.J., in *Brown* v. *Brash and Ambrose* [1948] 2 K.B. 247, 254, indicated the view that even when the period of absence was five or ten years there might be evidence sufficient to establish *animus revertendi*. The appeal should be dismissed.

EVERSHED, M.R., agreeing, said that the judge might well have come to a different conclusion, particularly as the tenant had left the house voluntarily. As had been said in *Hallwood Estates, Ltd.* v. *Flack* [1950] W.N. 268, the court ought to be cautious in giving protection to "two-home men."

HODSON, L.J., agreed. Appeal dismissed.

APPEARANCES: *R. K. Brown* (*Bailey, Cox, Bosworth & Co.*, Birmingham); *A. W. M. Davies* (*Lewin, Poole & Needham*, Birmingham).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: APPLICATION BY INDIVIDUAL TENANT FOR RENEWAL OF LEASE OF SHOP PREMISES OCCUPIED BY A COMPANY

Pegler *v.* Craven

Evershed, M.R., Jenkins and Hodson, L.JJ.
21st February, 1952

Appeal from East Grinstead County Court.

The plaintiff was the tenant of premises which comprised a shop and living accommodation. He occupied the living rooms with his wife; the shop was carried on by a company of which he was managing director and one of the shareholders. The landlord having given notice, as she was entitled to do under the terms of the lease, the tenant applied for, and was granted by the county court judge, a new tenancy for a year under the Leasehold Property (Temporary Provisions) Act, 1951. That Act provides by s. 10: "(1) . . . this Act shall have effect for enabling the occupier of a shop under a tenancy . . . to apply to the court for, and . . . to obtain, the grant of a new tenancy . . . (2) This section applies to a tenancy, the subject of which . . . (*b*) consists of a shop and of living accommodation occupied wholly or mainly by the tenant, or by a person who is employed by the tenant, for the purposes of the retail trade or business carried on in the shop . . ." Section 20 (1) provides that "'shop' means premises occupied wholly for business purposes and so occupied wholly or mainly for the purposes of a retail trade or business," and that "'the tenant,' in relation to a tenancy, means the person for the time being entitled to the tenancy." The landlord appealed.

JENKINS, L.J., said that the tenant had contended that the section was satisfied by the occupation of a servant, agent or licensee of the tenant, and that the company was his licensee as it paid no rent. But the expression "the occupier of a shop" could not properly be regarded as applying to a tenant, the shop portion of whose premises was taken up with the stock and business of a limited company. Other considerations might apply if the tenant was the beneficial owner of the whole or substantially the whole of the share capital. The context of the Act was such that "occupation" by a third party under a licence from the tenant, for purposes other than those of the tenant's own business, did not make the tenant the "occupier."

EVERSHED, M.R., and HODSON, L.J., agreed. Appeal allowed.

APPEARANCES: *A. E. Holdsworth* (*Thomas Eggar & Son*); *M. Eastham* (*Drew & Loughborough*, for *Pearless, de Rougemont and Co.*, East Grinstead).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

RESTORATION OF COMPANY'S NAME TO REGISTER: RETROSPECTIVE EFFECT

Tymans, Ltd. *v.* Craven

Evershed, M.R., Jenkins and Hodson, L.JJ.
22nd February, 1952

Appeal from St. Helens and Widnes County Court.

In 1950 the name of the appellant company was removed from the register of companies under s. 353 of the Companies Act, 1948. On 23rd July, 1951 (the last possible day but one), an application was made in the company's name to the county court for an order under s. 12 of the Leasehold Property (Temporary Provisions) Act, 1951, that the respondent should grant a new lease of a shop; the application was adjourned to 31st October, when the respondent raised the preliminary point that the company was not in existence at the date of the application, so that the application was a nullity; the county court judge acceded to the objection and dismissed the application. On 15th October an order had been made by the Palatine Court restoring the name of the company to the register, under the provisions of s. 353 (6) of the Companies Act, 1948, which provides that the court may, "if satisfied that the company was at the time of the striking off carrying on business or in operation . . . order the name of the company to be restored to the register, and . . . the company shall be deemed to have continued in existence as if its name had not been struck off; and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off." The company appealed.

EVERSHED, M.R., said that the question was what was the true construction of the words, "the company shall be deemed to have continued in existence as if its name had not been struck off." The subsection was specifically directed to cases such as the present; the final words were complementary to the general words and were intended to permit the restoration as far as possible of the *status quo ante*. It was in terms directed to a case like the present, when during the period of dissolution a number of acts had been done by persons purporting to act for the company. The words should be given a retrospective effect, so that after the 15th October it could no longer be contended that the company was non-existent. The appeal should be allowed and the case remitted to the county court for hearing.

HODSON, L.J., agreed.

JENKINS, L.J., dissenting, said that to give the subsection a retrospective construction would produce the startling result that the restoration of a company's name to the register, after a prolonged dissolution under s. 353, would automatically and indiscriminately validate all acts and things done in the meantime without regard to the rights of other persons. In the absence of clear words such a construction should not be adopted. The concluding words of the subsection were intended to give the court a discretionary jurisdiction, to be exercised when thought fit. Appeal allowed.

APPEARANCES: *L. Caplan* (*Lawrence Barnett & Co.*); *Pascoe Hayward*, Q.C., and *R. Bingham* (*Jaques & Co.*, for *T. J. Smith and Son*, Liverpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: RENT RESTRICTION: RIGHT TO USE KITCHEN

Hayward *v.* Marshall
Winchester *v.* Sharpe

Evershed, M.R., Jenkins and Hodson, L.JJ.
27th February, 1952

Appeals from Windsor County Court.

In these cases the tenants of unfurnished rooms had the right to use the kitchens, in one case for drawing water, and in the other case for drawing water and boiling washing once a week. The Increase of Rent and Mortgage Interest (Restrictions) Act,

1920, provides by s. 12 (2): "This Act shall apply to a house or part of a house let as a separate dwelling." The county court judge held that the tenants, who had received notice to quit, were not in occupation of "a separate dwelling." The tenants appealed.

HODSON, L.J., said that it was held in *Neale* v. *Del Soto* [1945] 1 K.B. 144 that, where the tenant had joint use of the kitchen and other offices, the rooms let exclusively did not constitute a "separate dwelling." In *Cole* v. *Harris* [1945] 1 K.B. 474 the accommodation to which the tenant was exclusively entitled included a kitchen, and there was a joint user with the landlord and another tenant of a bathroom and w.c.; it was held that there was not a "sharing" of the house. Normally, the kitchen was a room for living in and cooking in, and the mere right of entry from time to time for limited purposes did not constitute "sharing." The decisions in *Kenyon* v. *Walker* (1946), 62 T.L.R. 702, *Winters* v. *Dance* (1949), 66 T.L.R. (Pt. 1) 780, *Baker* v. *Turner* [1950] A.C. 401, and *Rogers* v. *Hyde* [1951] 2 K.B. 923, did not affect the present question, which was whether the use of a kitchen constituted a "sharing," when limited to the purposes specified. There was nothing in the authorities which compelled the county court judge to hold as he had done, and the appeals should be allowed.

EVERSHED, M.R., and JENKINS, L.J., agreed. Appeals allowed.

APPEARANCES: *Claude Duveen* (*Bower, Cotton & Bower*, for *T. W. Stuchbery & Son*, Windsor); *Gordon Hardy* (*Wilkinson, Howlett & Moorhouse; Gamlen, Bowerman & Forward*, for *Lovegrove & Durant*, Windsor).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

COMPANY: OSTENSIBLE AUTHORITY OF DIRECTOR

Rama Corporation, Ltd. *v.* Proved Tin and General Investments, Ltd.

Slade, J. 5th February, 1952

Action.

A director of the plaintiffs, W, acting on their behalf, made an agreement with T, a director of the defendants, who purported to be acting on their behalf, under which the plaintiffs upon payment of £2,000 were to participate in a transaction which the defendants were about to carry out. W knew T, but had not heard of the defendants before the date of the contract. He gave a cheque to T personally. T never disclosed to his fellow directors his transaction with W. The defendants' articles of association empowered the directors to delegate their powers to one of their number, and the purported transaction was *intra vires*, but no delegation had in fact been made. W never inspected the defendants' articles. The defendants having repudiated the purported agreement, the plaintiffs brought an action claiming an account; in the alternative a sum of money under s. 3 of the Law Reform (Miscellaneous Provisions) Act, 1934, and in the further alternative damages for alleged fraud.

SLADE, J., said that when a person was dealing with a company registered under the Companies Act, and had not informed himself of the articles of association of that company, he could not rely on the articles as conferring ostensible or implied authority on the representative of the company with whom he was dealing; the doctrine of constructive notice, as applied to the articles of a company, operated only in favour of the company and not against it. Those propositions were laid down in *Houghton & Co.* v. *Nothard, Lowe & Wills, Ltd.* [1927] 1 K.B. 246, and *Kreditbank Cassel* v. *Schenkers, Ltd.* [1927] 1 K.B. 826, both decisions of the Court of Appeal. Accordingly, there was no actual or implied authority on which the plaintiffs could rely, and the action failed.

APPEARANCES: *J. Perrett* (*Biddle, Thorne, Welsford & Barnes*); *T. M. Eastham* (*Kingsley, Napley & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

TRUNK ROAD: PROVISION OF PARKING "LAY-BY"

Rodgers *v.* Minister of Transport

Lord Goddard, C.J. 20th February, 1952

Action.

The plaintiff owned and occupied a house on the north side of a main trunk road within the London Traffic Area, which had grass verges and a footpath on the north side. Nearby was a transport café much used by lorry drivers, who habitually drove their vehicles on to the grass verge while taking refreshment, with the result that the verge was cut up and disappeared. In 1951 the county council, acting for the Minister of Transport, in whom the whole road was vested, constructed a new section of footpath further to the north, and in the space formerly occupied by the grass verge laid down a "lay-by" where vehicles could stand while the drivers went to the café. The plaintiff brought an action against the Minister and the county council claiming an injunction against providing or authorising a parking place on the grass verge, an order for reinstatement, and a declaration that the Minister's acts were *ultra vires*. She contended that the acts complained of had been done without compliance with the requirements of s. 68 of the Public Health Act, 1925, so that she had been deprived of her rights of objection and appeal under that section, and that the construction of the parking place had injuriously affected her property and interfered with her access to the highway. By ss. 47 and 48 of the Highway Act, 1864, a highway authority are authorised to make "improvements" to "highways" within their jurisdiction, including "widening" and "levelling." By s. 68 of the Public Health Act, 1925, a local authority may provide parking places and authorise the use as a parking place of any part of a street "not being a street within the London Traffic Area," and provision is made for public notification of such proposals, and for objections to be lodged, with a right of appeal to petty sessions.

LORD GODDARD, C.J., said that the basis of the action was that the local authority, as the highway authority, had failed to observe the provisions of s. 68; but as the road in question was in the London Traffic Area that section had no bearing on the case; the Minister was the highway authority for the road in question. The grass verge was part of the highway, and drivers had a right to stop there, so as to be out of the way of the traffic. What the defendants had done was to provide a place where lorries could safely stop, and it was right that they should stop in a place where they did not impede the traffic. The Minister had acted within his powers under ss. 47 and 48 of the Highway Act, 1864, and drivers who drew up on a part of the highway opposite the plaintiff's house were not trespassing, but exercising their lawful rights. Judgment for the defendants.

APPEARANCES: *R. Elwes*, Q.C., and *John Hobson* (*Waterhouse and Co.*, for *W. A. Wyatt*, Gravesend); *Sir R. Manningham-Buller*, Q.C., S.-G., and *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

City of London (Various Powers) Bill [H.C.] [18th March.

Hydro-Electric Development (Scotland) Bill [H.C.] [20th March.

Metropolitan Police (Borrowing Powers) Bill [H.C.] [20th March.

Read Third Time:—

Distribution of German Enemy Property Bill [H.L.] [18th March.

Industrial and Provident Societies (No. 1) Bill [H.C.] [20th March.

Insurance Contracts (War Settlement) Bill [H.L.] [20th March.

In Committee:—

Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Bill [H.C.] [18th March.

Motor Vehicles (International Circulation) Bill [H.L.] [20th March.

B. DEBATES

On motion, LORD MANCROFT called the attention of the House to the working of the **Legal Aid and Advice Act.** At the outset he wished to pay a tribute to The Law Society, who were largely responsible for putting the Act into operation so smoothly and so well. The scheme was run not by the State but by the legal profession, and in the main by the solicitors' branch of it. His reason for raising the matter was that during the last six months there had been a series of attacks levelled by the High Court Bench on the working of certain aspects of the scheme. There

had been accusations that the scheme was being extravagantly administered, that legal aid certificates were being given when they should not be given, and it had been suggested, in the most recent judicial criticism, that Parliament might look at the scheme and see whether it was working properly or not.

The Law Society had issued a report on the scheme, and from this it was seen that of the cases brought to the High Court on legal aid over 75 per cent. had been divorce cases. He thought this was lamentable. Nevertheless, the scheme was working well and at a much lower cost than had been expected, and he wondered whether some extension was not now possible. Could not Pt. II of the Act, which provided legal aid when life or liberty was in danger, now be brought into operation? Again, could there not now be some amelioration in the "means test" rules, which were fixed over seven years ago by the Rushcliffe Committee?

It had been said that the scheme encouraged a gentle form of blackmail. Even if an unassisted person won an action against an assisted person, he might have the greatest difficulty in recovering his costs. He thought this required investigation. Another point was that there was no legal aid at all in the poor man's court, the county court. The Rent Acts especially affected the poor litigant, though, oddly enough, in three recent cases in the High Court the landlord and not the tenant had been the assisted person. There was considerable ground for extending the scheme to the county courts. This would be impossible, however, without bringing in legal advice. The effect of the Act had been to jeopardise all the existing free legal advice centres; many had already had to close down. He did not think free legal advice would increase litigation but rather diminish it. He suggested that the legal advice centres should be set up now.

LORD GODDARD said he was not one of the judges who had openly criticised this Act in a hostile fashion. All owed a deep debt of gratitude to The Law Society and the area committees which had administered this work without remuneration. Naturally there were teething troubles. For example, he was convinced that if justice was to be done to the unassisted litigants something should be done to prevent unmeritorious appeals. After a judge had rejected the case, an assisted person went to his counsel, who was asked to give an opinion on the question of an appeal. The area committee might then give a certificate for the appeal. After consultation with the Lords Justices, he would suggest that an assisted person who wished to appeal should be required to obtain the leave of the trial judge, and that a judge who refused leave should be required to give reasons. The assisted person, if dissatisfied, could then, at trifling personal expense, ask the Court of Appeal for leave. An alternative course would be for the judge's reasons to be laid before the area committee, who would then decide whether a certificate for appeal should be granted.

He had been told by the Master of the Rolls and other Lords Justices that there were a considerable number of assisted appeals, but very few of them were successful. Another point was that aliens were apparently entitled to legal aid here. In one case an Austrian subject who came here to dispute a will was able to go to the Court of Appeal as an assisted person after a most careful and lengthy judgment at first instance. He would ask the Government to consider whether assisted litigation ought to extend to foreigners. With regard to the defence of persons accused at assizes or quarter sessions, during the past two years he had begged magistrates up and down the country to consider whether they were not giving this assistance far too freely. The old offenders were quite capable of making their own pleas in mitigation, and often it came much better from the prisoner than from anyone else. In many cases the only object in granting counsel was that a great many more prisoners pleaded guilty on the advice of their counsel than would otherwise have done so, with the result that they were able to get the assizes finished far more quickly. These people were not at all grateful to counsel; indeed, in the Court of Appeal they would give as their ground of appeal that counsel had made them plead guilty when they were entirely innocent. Lord Goddard suggested that, if the magistrates left counsel to be appointed by the trial judge, this would avoid the need of a solicitor being appointed to instruct counsel, with consequent saving of expense.

VISCOUNT SIMON said he agreed with Lord Mancroft that the need for legal aid would seem greater in the county court than in the High Court. He agreed with Lord Goddard that there were too many people who quite honestly thought that the Court of Appeal might take a different view of the facts, whereas in fact the verdict would not be overturned unless there was something wrong in the application of the law. On the other hand, his own impression was that a good number of assisted appeals were successful, thus justifying the judgment of the area committees. He thought there was great need of legal advice centres. Every Lord Chancellor had his postbags full of letters from people who thought they had unredressed grievances at law. Many of these persons would be helped by such centres.

LORD DOUGLAS said that the number of appeals assisted was not very large and in a majority of cases the assisted litigant had been successful. He felt that many people refused legal aid certificates because the amount required as their contribution was too heavy. The Advisory Committee had recommended a relaxation of the financial tests.

The LORD CHANCELLOR said there were two main strands of thought affecting this matter. First, the public mind clearly rejected the idea that a man should now be debarred from justice because of lack of means. The second was the knowledge that in mankind there was a deeply litigious spirit. This had to be guarded against in the legal aid scheme. He wished to thank The Law Society for its great work in bringing the Act into operation. Sixty-eight thousand applications had been considered and of these 40,000 had been given certificates. Two thousand five hundred had come to judgment so far, and of these about 88 per cent. had been successful. Of cases that went to the Queen's Bench Division 70 per cent. were successful and others were settled, generally in favour of the assisted person. He thought no other conclusion could be come to than that the Act had been administered carefully and skilfully. The certifying committees had to rely on the stories given to them by the applicants; they could not know the other side of the story and hence it was inevitable that some of the cases should be lost. He was satisfied that the Act was working extremely well.

Of assisted cases in the Court of Appeal twenty-five had been successful and twenty-four unsuccessful. It had to be remembered that in those twenty-five cases the successful appellant would have justly felt aggrieved if he had been denied the right to assistance on appeal. He had anxiously considered the question, and he thought something could be done by insisting that the certifying committee had a transcript of the judgment when considering the question of appeals. He would consider the suggestions made by Lord Goddard. The cost of the scheme had been nothing like what was expected, though it was expected that in a full year the cost would be about £1,500,000. A large proportion of the cost went in divorce cases.

It was a common misapprehension that the whole of the costs of an aided litigant were met by the State. The aided person usually had to contribute, and thus stood to lose something if he did not win. In many cases there was in fact no legal aid as the litigant paid the costs out of his contribution. In 12,500 cases in 1950–51 the contribution lay between £10 and £50 and in 5,800 it lay between £50 and £100. A small number contributed even more. He was unable to say when the other parts of the Act would be brought into operation. He would inquire into the question of foreigners coming here to enforce their rights and receiving legal aid.

Lord Simonds said he welcomed criticism of the scheme by the judges, but he would ask them not only to criticise in open court, but also to communicate all the facts to his department or to The Law Society, so that they could be investigated. He was bound to add that some of the criticisms made by Her Majesty's judges had been proved, on investigation, to be not at all well-founded. Perhaps that made it more desirable that they should communicate what they conceived to be wrong to the proper authorities. In one or two cases criticism had been conspicuously ill-founded.

[20th March.

C. QUESTIONS

CHILDREN OF DIVORCED PARENTS

The LORD CHANCELLOR said that the judges of the Probate, Divorce and Admiralty Division were making increasing use of the services of the court welfare officer in divorce cases. Since the present officer was appointed in December, 1950, he had been consulted in nearly seventy-five cases in which there was a dispute about custody or access to children. He had also helped the court to effect reconciliations in appropriate cases. He did not think there was any need to appoint further welfare officers at the present time, and he would prefer to review the matter again in the light of any recommendations which might be made by the Royal Commission on Marriage and Divorce.

[18th March.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Finance Bill [H.C.] [20th March.

To grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with finance.

Nationalised Industries (Membership of Trade Unions) Bill [H.C.] [19th March.

To prohibit the payment of money by the boards of nationalised industries to certain organisations which prohibit their members from being members of trade unions.

Read Second Time :—

Rochester Corporation Bill [H.C.] [20th March.
West Hartlepool Extension Bill [H.C.] [20th March.

Read Third Time :—

Miners Welfare Bill [H.C.] [20th March.

In Committee :—

Cinematograph Film Production (Special Loans) Bill [H.C.] [20th March.

Export Guarantees Bill [H.C.] [20th March.

B. Questions

Dangerous Drugs Act (Convictions)

The Home Secretary stated that the number of convictions under the Dangerous Drugs Acts for the years 1949 and 1950 were 159 and 147 respectively. The provisional figure for 1951 was 234. He believed that some of the increase in convictions was due to increased vigilance on the part of the Police, Customs and Dangerous Drugs Inspectorate. He wished to make it clear that there was no sign of the existence of regular, organised, widespread illicit traffic.

[20th March.

Driving Offences (Drunkenness)

Sir David Maxwell Fyfe stated that during the first five months of 1951 there were 1,956 convictions in the magistrates' courts for the offence of driving whilst under the influence of drink. Sentences of imprisonment without the option of a fine were imposed in 129 of these cases and the offender was disqualified from holding a driving licence in 1,861 cases.

[20th March.

Cruelty to Children (Prosecutions)

Sir David Maxwell Fyfe stated that between 1st January, 1946, and 30th September, 1951, proceedings were taken against 6,329 persons for ill-treatment or neglect of children and 5,809 persons were found guilty. He had no means of knowing how many of these cases concerned boarding schools.

[20th March.

Police : Disciplinary Hearings (Witnesses)

Asked by Mrs. Braddock whether he was aware that the wife of a serving police officer could be called to give evidence against her husband at a disciplinary hearing, and if he would take steps to alter this, the Home Secretary said that no witness, other than a serving member of a police force, could be called against his or her will to attend a disciplinary hearing by the chief officer of police or the watch committee.

[20th March.

Motorists, London (Interrogation)

The Home Secretary said he was informed by the Commissioner of Metropolitan Police that police officers questioning motorists concerning motoring offences should only ask questions as to age when the person concerned appeared to be a juvenile. There were no instructions to officers to ask for the person's profession, but it was the practice to ask whether the address tendered by a reported person was his private or business address.

[20th March.

Road Traffic Act, 1930 (Summonses)

Mr. Philip Bell asked the Home Secretary whether he was aware that petty sessional courts were attaching printed notices to their summonses under s. 10 of the Road Traffic Act, 1930, referring to the provisions of s. 33 of that Act, which implied that defendants need not attend at the hearing, and upon their non-attendance were issuing warrants for arrest; and whether he would circularise magistrates suggesting an alteration in the form of this notice, a copy of which had been sent to him, and also advising them on the matters which they should take into consideration before exercising their powers to issue warrants of this nature. Sir David Maxwell Fyfe said that one such case had been brought to his notice. He was making inquiries about it and would communicate further with Mr. Bell. The situation generally was not such as called for any general advice from him.

[20th March.

STATUTORY INSTRUMENTS

Approved Schools (Contributions by Education Authorities) (Scotland) Regulations, 1952. (S.I. 1952 No. 496 (S. 16).)

Bacon (Rationing) (Amendment No. 2) Order, 1952. (S.I. 1952 No. 548.)

Barnsley Water Order, 1952. (S.I. 1952 No. 531.) 6d.

Bread (Amendment No. 2) Order, 1952. (S.I. 1952 No. 527.) 5d.

British Protectorates, Protected States and Protected Persons (Amendment) Order in Council, 1952. (S.I. 1952 No. 457.)

Coal Industry Nationalisation (Payment of Costs) Regulations, 1952. (S.I. 1952 No. 517.) 5d.

Draft **Coal Mines** (Officials and Inspections) General Regulations, 1952.

County of Hertford (Electoral Divisions) Order, 1952. (S.I. 1952 No. 467.)

County of York, North Riding (Electoral Divisions) Order, 1952. (S.I. 1952 No. 493.)

Courts-Martial (Appeals) (Commencement) Order, 1952. (S.I. 1952 No. 450 (C. 2).)

This order fixes 1st May as the appointed day for the purposes of Pt. I of the Courts-Martial (Appeals) Act, 1951.

Criminal Justice (Scotland) Act, 1949 (Commencement No. 2) Order, 1952. (S.I. 1952 No. 463.)

Export of Goods (Control) Order, 1951 (Amendment No. 6) Order, 1952. (S.I. 1952 No. 505.)

Flour (Amendment No. 2) Order, 1952. (S.I. 1952 No. 528.) 5d.

Foreign Services Fees (Amendment) Order, 1952. (S.I. 1952 No. 460.)

Freshwater Fisheries (Lincolnshire River Board Area) Order, 1952. (S.I. 1952 No. 498.)

Furniture (Maximum Prices) (Amendment No. 2) Order, 1952. (S.I. 1952 No. 487.)

Glasgow—Greenock—Monkton Trunk Road (Kilwinning By-Pass) Order, 1952. (S.I. 1952 No. 473.) 5d.

Infants' and Children's General Apparel (Maximum Prices) (Revocation) Order, 1952. (S.I. 1952 No. 504.)

Inland Post Amendment (No. 7) Warrant, 1952. (S.I. 1952 No. 557.)

Justices of the Peace Act, 1949 (Commencement No. 4) Order, 1952. (S.I. 1952 No. 462.)

As to this order, see p. 171, *ante*.

Juvenile Courts (Constitution) Rules, 1952. (S.I. 1952 No. 553.)

Labelling of Food (Amendment) Order, 1952. (S.I. 1952 No. 549.)

Lace and Net (Manufacture and Supply) Order, 1952. (S.I. 1952 No. 488.) 6d.

Linoleum and Printed Felt Base (Maximum Prices and Charges) (Amendment No. 5) Order 1952. (S.I. 1952 No. 442.)

London—Carlisle—Glasgow—Inverness Trunk Road (Dinwoodie Lodge and Dalmakethar Diversions) Order, 1952. (S.I. 1952 No. 449.)

London—Holyhead Trunk Road (Meriden By-Pass) (Variation) Order 1952. (S.I. 1952 No. 472.)

London Traffic (Prescribed Routes) (No. 6) Regulations, 1952. (S.I. 1952 No. 550.)

Maintenance Orders (Facilities for Enforcement) (New Brunswick) Order, 1952. (S.I. 1952 No. 454.)

This order extends to New Brunswick the provisions of the Maintenance Orders (Facilities for Enforcement) Act, 1920.

Meat Products Order, 1952. (S.I. 1952 No. 507.) 11d.

Midwives (Constitution of Central Midwives Board) Order, 1952. (S.I. 1952 No. 525.)

National Insurance and Industrial Injuries (Reciprocal Agreement with France) Order, 1952. (S.I. 1952 No. 461.) 6d.

National Insurance (Classification) Amendment Regulations, 1952. (S.I. 1952 No. 494.)

National Insurance (Industrial Injuries) (Insurable and Excepted Employments) Amendment Regulations, 1952. (S.I. 1952 No. 495.)

National Insurance (Overlapping Benefits) Amendment (No. 2) Regulations, 1952. (S.I. 1952 No. 526.) 8d.
Pitcairn, Ocean, and Fanning Islands Extradition (Revocation) Order in Council, 1952. (S.I. 1952 No. 456.)
Retention of Cable Under Highway (North Riding of Yorkshire) (No. 1) Order, 1952. (S.I. 1952 No. 447.)
Special Constables (Pensions) (Scotland) Order, 1952. (S.I. 1952 No. 465.)
Stevenage Development Corporation Water (Appointed Day) Order, 1952. (S.I. 1952 No. 532.)
Stopping up of Highways (Cornwall) (No. 1) Order, 1952. (S.I. 1952 No. 448.)
Stopping up of Highways (Cornwall) (No. 2) Order, 1952. (S.I. 1952 No. 470.)
Stopping up of Highways (Durham) (No. 1) Order, 1952. (S.I. 1952 No. 438.)
Stopping up of Highways (Glamorganshire) (No. 2) Order, 1952. (S.I. 1952 No. 446.)
Stopping up of Highways (Kent) (No. 2) Order, 1952. (S.I. 1952 No. 469.)
Stopping up of Highways (London) (No. 4) Order, 1952. (S.I. 1952 No. 444.)
Stopping up of Highways (London) (No. 5) Order, 1952. (S.I. 1952 No. 445.)
Stopping up of Highways (London) (No. 6) Order, 1952. (S.I. 1952 No. 471.)
Stopping up of Highways (Middlesex) (No. 1) Order, 1952. (S.I. 1952 No. 468.)
Stopping up of Highways (Worcestershire) (No. 2) Order, 1952. (S.I. 1952 No. 474.)
Superannuation Scheme for Teachers (Scotland), 1952, Approval Order, 1952. (S.I. 1952 No. 464.)
Teachers' Pensions (National Service) (Scotland) Rules, 1952. (S.I. 1952 No. 518 (S. 17).) 5d.
Teachers' Superannuation (Royal Air Force) Varying Scheme, 1952. (S.I. 1952 No. 520.)
Teachers' Superannuation (Royal Naval College, Dartmouth) Scheme, 1952. (S.I. 1952 No. 519.)
Tonga Order in Council, 1952. (S.I. 1952 No. 458.) 6d.
Utility Furniture (Marking and Supply) (Amendment) Order 1952. (S.I. 1952 No. 486.)
Utility Goods (Maximum Prices) (Revocation) Order, 1952. (S.I. 1952 No. 490.) 5d.
Utility Goods (Revocation) Order, 1952. (S.I. 1952 No. 489.) 6d.
Utility Goods (Supply) Order, 1952. (S.I. 1952 No. 491.) 5d.
Women's and Maids' Nylon Stockings (Marking and Supply) Order, 1952. (S.I. 1952 No. 492.) 5d.
Yorkshire Ouse River Board (Selby Internal Drainage District) Order, 1952. (S.I. 1952 No. 477) *and* Yorkshire Ouse River Board (Selby Internal Drainage District) (Appointed Day) Order, 1952. (S.I. 1952 No. 478.) [*Printed together as one document.*] 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Estate Duty—Death of Annuitant—Capital Value of Fund Aggregable with Free Estate

Q. A testator died in 1935, leaving a widow and a daughter as his annuitants, and a number of sons as his residuary legatees and devisees. Estate duty was paid in full in 1935, and one per cent. legacy and succession duty on his residuary estate. By his will the testator left an annuity of £750 to his widow and a like annuity to his unmarried daughter, providing that on the death of either of them the survivor's annuity should be increased to £1,000 per annum. The daughter has recently died, and the Estate Duty Office seek to aggregate the capital value of the funds producing her annuity with her own estate to determine the rate applicable to her free estate, and have also raised a claim in the testator's original estate for duty on the capital value of the fund producing the annuity. The Finance Act, 1894, s. 7 (7) (*b*), appears to be the authority. It would appear that estate duty will be payable in the testator's estate on something like £20,000 estimated capital value of the fund producing the annuity. For family reasons no separate fund was established to provide the annuities. They were paid out of the income produced by the residuary estate as a whole. Your opinion is now sought as to the appropriate rate of duty in the testator's estate on the capital value of the daughter's annuity: as estate duty has already been paid in full once, is it right that the full rate of duty will have to be paid again? As the residuary legatees are benefiting only to the extent of £500 per annum and not £750 per annum, are we right in assuming that estate duty should only be paid on a proportion of two-thirds of the value of the fund? Obviously the benefit passing on the daughter's death is the full value of her annuity, but this benefit passes in two separate directions.

A. The daughter had an interest in the testator's will fund ceasing on her death, within the meaning of s. 2 (1) (*b*) of the Finance Act, 1894, and there is no doubt that the slice of capital of that fund required by the income thereof to produce her annuity attracts duty by virtue of s. 7 (7) of the Act. This slice of capital is aggregable with the daughter's free estate, in order to determine the rate of duty on both. It makes no difference that no separate fund was set aside to meet the annuity, nor that duty has already been paid on the testator's property on the occasion of his own death. The query indicates that legacy and succession duty were paid at one per cent. on the capital of the testator's residuary estate to cover the interests both of the annuitants and of the residuary legatees. If that was so, the rate of estate duty on the slice of capital of the testator's will fund falls to be reduced by one per cent. in accordance with s. 29 of the Finance Act, 1949. The fact that the benefit from the cesser of the daughter's annuity accrues partly to the mother-annuitant and partly to the residuary legatees makes no difference to the amount of estate duty payable. Care is required, however, in apportioning the burden of the duty between the mother and the residuary legatees. Reference should be made to the cases of *Re Parker-Jervis* [1898] 2 Ch. 643 and *Re Palmer* [1916] 2 Ch. 391 in this connection.

Agricultural Holding — Expiry of Lease—"Increase of Rent" by way of Premium

Q. His lease having expired, an agricultural tenant of arable land only agrees to pay an increased rent. He suggests that in order to avoid his drainage or any other assessment being raised the additional rent should be paid in a lump sum by way of a premium. Can this be done on his being granted a lease, say, for five years at the old rent and the additional rent for that period recited as a premium? If so, are the owners liable for an excess rent in respect of such premium?

A. There is no restriction on the right to receive premiums in the case of agricultural holdings; but a premium is not rent—it is "a cash payment made to the lessor, representing or supposed to represent the capital value of the difference between the actual rent and the best rent that might otherwise be obtained" (definition given by Warrington, L.J., in *King* v. *Cadogan* [1915] 3 K.B. 485 (C.A.)). It would certainly be advisable to mention the payment in the new lease, having regard to *Alexander* v. *Rayson* [1936] 1 K.B. 169. The premium would, as mentioned, be perfectly legal; but in the event of the tenant seeking a reduction of rent under s. 8 of the Agricultural Holdings Act, 1948, when the proposed five years' term ends, the fact that it was paid might conceivably affect the arbitrator; on the other hand, it would (provided it be paid as a premium and not spread as additional rent: see *Samuel* v. *Salmon & Gluckstein, Ltd.* [1946] Ch. 8) be ignored in measuring compensation for disturbance under s. 34 of that Act.

Mr. J. S. Bass, M.B.E., T.D., has been appointed Recorder of the Borough of Great Yarmouth.

Mr. A. P. Marshall, Q.C., has been appointed Recorder of the City of Coventry.

BOOKS RECEIVED

The Conveyancer and Property Lawyer. Volume 15. (New Series.) By DONALD C. L. CREE, M.A., of Lincoln's Inn, Barrister-at-Law, HAROLD POTTER, LL.D., of Gray's Inn, Barrister-at-Law, and EDWARD F. GEORGE, LL.B., Solicitor of the Supreme Court. 1951. pp. xi and (with Index) 599. London: Sweet & Maxwell, Ltd. £2 10s. net.

Index to the Income Tax Act, 1952. Including comparative tables relating the old legislation to the new. By A. C. MONAHAN, B.A. 1952. pp. 160. London: The Solicitors' Law Stationery Society, Ltd. 15s. net.

Handbook on the Income Tax Act, 1952. Simon's Income Tax. Prepared by BUTTERWORTHS' LEGAL EDITORIAL STAFF. 1952. pp. x, 395 and (Index) 100. London: Butterworth & Co. (Publishers), Ltd. 27s. 6d. net.

Craies on Statute Law. Fifth Edition. By SIR CHARLES E. ODGERS, M.A., B.C.L., of the Middle Temple, Barrister-at-Law, late Puisne Judge of the High Court of Judicature at Madras. 1952. pp. cvii and (with Index) 618. London: Sweet and Maxwell, Ltd. £5 10s. net.

The Law Relating to Moneylenders. Fourth Edition. By THE RT. HON. LORD MESTON, of Lincoln's Inn and the South-Eastern Circuit, Barrister-at-Law. 1952. pp. xl and (with Index) 451. London: The Solicitors' Law Stationery Society, Ltd. £3 10s. net.

Emmet's Notes on Perusing Titles and on Practical Conveyancing. Second (Cumulative) Supplement to the Thirteenth Edition. By J. GILCHRIST SMITH, LL.M., Solicitor (Honours). 1952. pp. xix and 107. London: The Solicitors' Law Stationery Society, Ltd. 10s. 6d. net.

REVIEWS

Conveyancing Precedents under the Property Statutes of 1925. Fourth Edition. By HUBERT A. ROSE, M.A., of the Inner Temple and of Lincoln's Inn, Barrister-at-Law, and MICHAEL BOWLES, B.A., of Gray's Inn and of the Inner Temple, Barrister-at-Law. 1952. London: Waterlow and Sons, Ltd. 40s. net.

The first edition of this book was particularly valuable on account of its provision of precedents of transactions specially affected by the 1925 property statutes. Subsequent editions have continued to be written in a scholarly manner, so that the book, being of a convenient size, has had value of a unique character. The precedents are invariably followed by a number of learned explanatory notes, which are most useful, for instance, for explaining the reasons for the provisions in the precedents and for discussing doubtful points. The book is strongly recommended for use by articled clerks, who will find most of the precedents they are likely to need with explanations which will assist in relating the knowledge acquired from students' books to transactions arising in practice.

The authors take a very conservative view of the effect of the Town and Country Planning Act, 1947, on conveyancing, and so one does not find many references to matters arising under that Act. Nevertheless they have given convincing reasons (for instance at pp. 96 and 97) for their views on this Act, and on other recent statutes, and the precedents have been modified appropriately.

The only material criticism the reviewer would make of the present edition is that it appears to have been very slow in passing through the press. Copies were not available until early in March, 1952, although the preface is dated 20th August, 1951. A few cases reported in 1951 are mentioned in the text, for instance *Re Webb* [1951] Ch. 808, but others reported earlier, for instance *Re Lander* [1951] Ch. 546, are dealt with (at p. lxxxiv) in Addenda which are so extensive as to occupy five pages. By careful arrangements between authors and publishers, it should be possible to avoid the use of Addenda in a volume of this size and prompt publication should be the aim of all. An example of obsolete references is to be found at p. 98, where one is referred to the Tithe Act, 1936, s. 18 (9), and to the Redemption Annuities (Amendment) Rules, 1937 (both now repealed), for the particulars which should be furnished on sale of land on which an annuity is charged. These references should now be to the Tithe Act, 1951, Sched. I, para. 3, which Act was passed on 1st August, 1951, and to the Tithe (Change of Ownership of Land) Rules, 1951, which came into operation on 1st September, 1951. Although there is a reference in the Addenda to another point on the same page, there is no amendment as to these authorities.

A major characteristic of the authors' work is the very great care and skill with which they draft their precedents and explain their reasons. Consequently, their book can be used for quick reference with the knowledge that speed need not result in bad work.

Palmer's Company Precedents. Sixteenth Edition. Part II: Winding-up Forms and Practice. By His Honour A. F. TOPHAM, Q.C., LL.M., Bencher of Lincoln's Inn. 1952. London: Stevens & Sons, Ltd. £6 15s. net.

This massive tome encompassing the accumulated wisdom of many draftsmen over many years is an essential book of reference for the company specialist, particularly since twenty-one years have elapsed since the last edition. Its price is high but justifiably so. The introduction of the Companies Act, 1948, and the Companies (Winding-Up) Rules, 1949, made a new edition both inevitable and essential.

It is a pity that *Henry Head & Co.* v. *Ropner Holdings, Ltd.*, was not decided in time for it to be dealt with fully rather than by a short note in the Addenda. Out of this case numerous questions arise as to the amount to be credited to share premium account in cases of reconstruction or amalgamation, and the views of the learned editor would have been valuable.

Criticisms which could be made of this edition are so small as to be unworthy of mention. It is completely up to date and fully comprehensive. It is an excellent edition fully up to the high standard set by its predecessors.

Ranking and Spicer's Company Law. Ninth edition. Edited by H. A. R. J. WILSON, F.C.A., F.S.A.A., and T. W. SOUTH, B.A., of the Middle Temple, Barrister-at-Law. 1951. London: H. F. L. (Publishers), Ltd. 25s. net.

The eighth edition of this book was reviewed in THE SOLICITORS' JOURNAL just over two years ago and then, while giving the book high commendation, two major criticisms were made. The paragraphs then criticised still remain unaltered and one can only assume that the editors do not read reviews—this is a pity because once an incorrect statement appears in a book it will probably never be put right, if new editions are designed merely to bring up to date.

The new edition has been brought up to date, in general satisfactorily. On perusal the following points emerge: (1) it is wrong to say that all bonus issues require the consent of the Capital Issues Committee (p. 182); this was the position only prior to 21st April, 1949, on which date the Control of Borrowing (Amendment of Exemption Provisions) Order, 1949 (S.I. 1949 No. 755), came into force; (ii) *Jones* v. *Bellegrove Properties, Ltd.* [1949] 2 K.B. 700 should have been considered in relation to unclaimed dividends (p. 388); (iii) reference to the Courts (Emergency Powers) Act, 1943, on p. 250, has correctly been deleted but the reference still appears in the table of statutes. It will be interesting to see if the 10th edition corrects these errors.

New chapters with regard to winding-up have been added and, no doubt as a consequence, the price of the book has risen from 21s. to 25s. It is still good value for the price.

NOTES AND NEWS

Honours and Appointments

Mr. D. S. ACKROYD, deputy clerk of the Yorkshire Ouse Rivers Board, has been appointed clerk of the newly constituted Nene Rivers Board.

The Bishop of Portsmouth has appointed Mr. D. M. M. CAREY to be his legal secretary.

Mr. R. L. GRAHAM, assistant solicitor to the Cumberland County Council, has been appointed deputy clerk to the County Council in succession to Mr. A. C. HETHERINGTON, who is taking up a similar post with the Cheshire County Council.

Mr. C. H. N. SCOTT has been appointed assistant deputy coroner for South Buckinghamshire.

Personal Notes

Mr. A. J. Davis, clerk to Cuckfield Rural Council, has resigned in order to seek election as a councillor.

Miscellaneous

NORTHAMPTON COUNTY BOROUGH DEVELOPMENT PLAN

The above plan was on 14th March, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County Borough of Northampton. A certified copy of the plan as submitted for approval may be inspected at The Guildhall, Northampton, from 9 a.m. to 1 p.m. and 2 p.m. to 5 p.m. (Saturdays 9 a.m. to 12 noon). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 30th April, 1952, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Northampton County Borough Council and will then be entitled to receive notice of the eventual approval of the plan.

PRACTICE DIRECTION

CHANCERY DIVISION

THE WITNESS LIST

The following Practice Direction is substituted for those of March 21st, 1949 ([1949] W.N. 141), March 6th, 1950 ([1950] W.N. 163), and December 4th, 1951 ([1952] W.N. 106).

1. There will be one list only of actions awaiting trial. Actions will appear in the list twenty-three days after being set down for trial but will not be heard earlier than six weeks from the date on which they first so appear unless a day for hearing is fixed as provided below. After the expiration of that period, actions for which no day for hearing has been fixed will come on for trial, in the order in which they appear in the list, before any Judge who has time available. The date on and after which such an action will be liable to come on for trial will be indicated in the list.

2. All applications with regard to actions appearing in the witness list, including applications for the fixing of a day for the hearing, must be made to the Judge notified in the Daily Cause List as the Judge in charge of the list. If, upon the settlement of any action which has been set down, no order is required, immediate notification of the settlement, signed by the Solicitors for all parties, must be left with the Clerk of the Judge in charge of the list, when the case will be struck out of the list.

3. A party intending to apply for the fixing of a day for hearing shall give not less than forty-eight hours' notice in writing (*a*) to the other parties to the action (other than parties in default against whom he is entitled to move for judgment), and (*b*) to the Clerk of the Judge in charge of the list specifying the day or alternative days for which he proposes to apply; each party shall be prepared to furnish to the Judge all relevant information, including the number of witnesses he intends to call, the approximate volume of documentary evidence, the nature of the issues involved, and an estimate of the length of the trial. The parties should endeavour to agree, before the application is made, a day or alternative days which (subject to being available) will be suitable to all parties. Applicants before giving notice of their application should inform themselves of the days apparently available by reference to the published list of actions already fixed.

4. If circumstances affecting the probable length of an action for which a day has been fixed arise, notice of the fact and, where appropriate, a revised estimate of the length of the hearing must be given promptly to the Clerk of the Judge in charge of the list.

By direction of the Judges of the Chancery Division.

W. S. JONES,
Chief Registrar,
Chancery Division.

20th March, 1952.

SOCIETIES

Following upon the forty-ninth annual general meeting of the STOCKPORT INCORPORATED LAW SOCIETY, held on 14th February, 1952, with the President, Mr. W. Richardson, in the chair, the officers and committee of the society for the year 1952–53 are: President, Mr. W. Richardson; Vice-Presidents, Messrs. J. A. K. Ferns, G. A. Baker and T. R. Ellis; Hon. Treasurer, Mr. Thomas Hidderley; Hon. Secretary, Mr. L. E. Crosland; Hon. Auditors, Messrs. A. Newton and A. Wainwright. Committee: Messrs. H. Walls, J. P. Peacock, A. Wainwright, J. Gass, J. Abson, E. Higginbottom, E. Thornley, J. H. W. Glen, G. A. Hurst, J. C. Moult, H. Sidebotham, M. L. Hall and J. E. Shaw.

PRINCIPAL ARTICLES APPEARING IN VOL. 96

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 102–103 Fetter Lane, London, E.C.4. Telephone: Chancery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s., (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).